

CONSISTORY COURT OF THE DIOCESE OF ROCHESTER

re Gravesend and Milton Cemetery

Introduction

1. In this petition for exhumation, the petitioner is Evelyn Le Chene, the widow of Captain Pierre Louis Le Chene. She seeks the exhumation of his cremated remains from the consecrated part of the Gravesend and Milton Cemetery, to be removed to a reserved plot in a cemetery in Jaillans in the Drôme region of southern France.

The deceased

2. Captain Le Chene was born in England to French parents in 1900. He served with distinction as a wireless operator in the Special Operations Executive (“SOE”) in France where, after capture in late 1942, he was interrogated and tortured by the notorious Klaus Barbie in Lyon and then by the SS in Paris before being taken to Mauthausen concentration camp. He survived there for nearly two years until its liberation in May 1945. After the War, it is said that he continued to work for military intelligence, but it is also recorded that he moved to France in 1946 to open a hotel with his brother and sister-in-law. He was awarded the MBE (Military) and the Croix de Guerre with palm, and received the rare honour of being made an Officier of the Légion d’honneur. (It is only fair to add that I have been provided with a range of documents concerning the deceased, some of which suggest with some authority that he in fact bore the rank of Lieutenant rather than Captain; and some, with rather less authority, that he was the recipient of an OBE, although that is what is recorded on his memorial in the cemetery at Gravesend. His memorial does not accord him a rank, referring simply to his service in the SOE. I have referred to him as Captain, as that is how he is referred to in the petition. Nothing turns on this, and there is no question of any deliberate attempt to mislead me or anyone else.)

3. Upon his death in France in 1979, his remains were returned to England to be interred in his wife's home town of Gravesend; a contemporaneous news report recorded that this was in accordance with his wishes.

The petition

4. His widow seeks the exhumation of his remains on three grounds, which I set out in full here:
 - a. *All the family is here in France. But just as importantly, Pierre was very close to his brother and sister-in-law – all Brits as am I, who lived very close to Pierre and I here in the Drome, so it would ensure reuniting all the family as I know all of them would have wished, along with specified reserved place in the new grave for myself.*
 - b. *When Pierre was dying I promised him that when my time came I would be reunited with him. This had a calming effect for his stress for which I will always be grateful. As I have never had any intention of forgetting that promise – it is written as such in my Will and Testament – his transfer is much, much desired.*
 - c. *Pierre was the holder of the highest decoration that France can bestow for Courage and Loyalty – the Legion of Honour. He was first Chevalier of the order (a form of Knighthood) then one of the rare Brits to be promoted to Officer rank within the Order which is a mighty promotion indeed for a 'foreigner'! His Award was signed by General de Gaulle himself. Along with that went a Croix de Guerre (War Cross) with Palm and a stretch of others to denote the specific acts for which he was awarded. Local, County and French State organisations have been waiting to receive Pierre's urn and intend to organise what will be an impressive reception of his remains and installation in France. As I unveiled a Trilogy of memorials last September to British SOE (Intelligence – SOE) agents who died in the Drome during the war, you will readily see the programme that awaits and will coincide with the 80th anniversary of the end of the war.*

5. I was also given the following further information:

The Legion of Honour would wish Pierre's transfer to be within their programme of Official Remembrance Ceremonies to commemorate the end of WW2 in Europe and look to the end of May to ensure this if at all possible.

6. The burial authority, Gravesham Borough Council, has indicated its consent to the petition; and has told me that it would take responsibility for the exhumation and, if necessary, recontainment of the remains, which are said to be in a large casket made to contain the cremated remains of two persons in two separate compartments. It would also take responsibility for the safety and maintenance of the existing memorial thereafter.
7. I record two other relevant pieces of information:
- a. I am told that the deceased and the petitioner have a son, Christophe. I have no information on his views on the present petition; for reasons set out below, I proceed on an assumption favourable to the petitioner, that he does not object.
 - b. I am told that no other interments have taken place in the present grave; the petitioner has the exclusive right of burial there.

Procedural matters

8. The petition is dated 6th April 2025, and the letter from the burial authority is dated 7th April; the papers reached me the following day. It will be apparent from this that, although the petitioner did not identify any particular urgency, the petition would have to be disposed of with significant expedition if any exhumation was to be carried out in sufficient time for the removal of the remains to France to precede the VE Day celebrations.
9. To this end, I took two particular steps:

- a. I made case management decisions which would allow me fairly and justly to conclude my consideration of the petition with the minimum of delay. In particular, since it appeared to me inconceivable that I would find that a hearing would be necessary or appropriate (not least, the petitioner is elderly and resident in France), I determined that it would be expedient to dispose of the petition on the papers without undertaking the prior consultation mandated by FJR Rule 14.1(2). In addition, I determined that I already had sufficient information from the petitioner with which to determine the petition, and I therefore did not invite further evidence or submissions. I have been careful, in considering the merits of the petition, to ensure that the petitioner's case has not been prejudiced by the absence of information which she might have given in response to such an invitation; and I am reassured in this by noting that the petitioner was (as all such petitioners in this diocese are) provided with a summary of the principles and guidelines set out in *re Blagdon Cemetery* [2002] Fam 299, which is the authority which binds and guides my consideration of the petition.
- b. I gave my decision after a period of careful consideration, on 15th April, so the petitioner would have the longest possible period of notice of it before any events of VE Day. I gave a short statement of reasons then, with an undertaking to give a full written judgment within a few days. This is that judgment.

Determination

10. The starting point for my consideration of this petition must be the Court of Arches decision in *re Blagdon Cemetery* [2002] Fam 299. That decision is binding on me. It explains that there is a general presumption that Christian burial is permanent, and the necessary faculty for exhumation from consecrated ground will only be given in circumstances sufficiently compelling as to properly justify making an exception to that permanence. Ultimately, it is a matter for the exercise of the court's discretion, albeit against the background of the clear presumption in favour of the permanence

of burial. Any notion that remains are to be regarded or treated as in any way “portable” is to be resisted.

11. It is plainly desirable that, so far as is reasonably possible, there should be consistency in decisions: similar cases should generally be decided similarly. *re Blagdon Cemetery* itself makes this point. However, as recently observed in *re Kidderminster, St George* [2022] ECC Wor 10: “[i]t has to be said that it is not particularly easy to find a clear path through the reported decisions of Chancellors who endeavour to balance the doctrine of the permanence of Christian burial with the understandable desires of petitioners in their various circumstances.” The Chancellor there rightly paid particular attention to reported decisions of the consistory court of her own diocese. However, I have found no reported decisions from this diocese on exhumation on which I can put particular weight.
12. In exercising my discretion, therefore, I consider the following factors, among those identified in *re Blagdon Cemetery*, to be relevant. In doing so, I remind myself that any factors in favour of granting a faculty can operate cumulatively; that is, even though any single factor may not be sufficient to constitute an exception to the presumption of permanence, the combination of factors may nevertheless be sufficient.

Lapse of time

13. While the Court of Arches in *re Blagdon Cemetery* said that lapse of time is not determinative, it can be a factor militating against the grant of such a faculty. In this case, some 45 years have passed since Captain Le Chene’s ashes were interred in Gravesend.
14. While, as I have noted, I must not hold an absence of evidence against the petitioner, there is no sense in the papers that this is a petition which has been a long time in its gestation, or that it has been held back or refrained from for any particular reason. In particular, I can see that it is only very recently that the petitioner has obtained a concession in her home of Jaillans for a burial site to which it is proposed to move the remains; the concession was newly granted only in October last year.

15. I am not persuaded that there is a good explanation for what, on any view, must be a significant passage of time within which this petition could have been brought.

Mistake

16. Where there has been a mistake as to the intended location of an interment (such as, for example, interment in a grave reserved for another), or as to the nature of the interment (such as, for example, an interment in consecrated ground when due to the deceased's religious or other beliefs that was inappropriate), grounds for exhumation may readily be made out.

17. However, the court in *re Blagdon Cemetery* expressly said that:

... a change of mind as to the place of burial on the part of relatives or others responsible in the first place for the interment should not be treated as an acceptable ground for authorising exhumation.

18. In the present case, there is no suggestion of any operative mistake. Captain Le Chene appears to have had a life established in France since shortly after the war, along with his brother and sister-in-law with whom I am told he was in the hotel business. Despite this settled life for at least three decades, his remains were returned to England, and to his wife's home town, for interment in a grave in which the petitioner had obtained the exclusive right to interment. It would be impossible to discern, at this distance in time, whether this was in reluctant fulfilment of the deceased's wish or whether it accorded wholeheartedly with the petitioner's wishes. However, I do note that the casket in which his remains are interred is designed to accommodate a second set of remains, which would accord with her evidence that she promised the deceased that she would be interred with him. It would appear, therefore, that she was content that both he and she would be interred in Gravesend when her time came.
19. It does therefore appear that the motivation behind the present petition can be better characterised as a change of mind than a mistake.

Family graves

20. The court in *re Blagdon Cemetery* recognised that family graves both express family unity and represent an economical use of land for burials; and it considered that the creation of a family grave might constitute sufficient reason to permit exhumation. (In both *re Blagdon Cemetery* and the present case, the exhumed remains would be the first interment in the new, family grave.)
21. I am satisfied that there is the necessary legal right for a family grave to be established in Jaillans (although the concession is only for fifty years, it is clear that this period is subject to renewal or extension). But this cannot take away from the fact that there is already a family grave in Gravesend, where there is a casket designed to take the petitioner's cremated remains when her time comes; in a plot where the petitioner has already secured the right of interment. In circumstances where exhumation is not a necessary precursor to the creation of a family grave, this factor does not significantly assist the petitioner.

Other factors

22. While not falling into any of the categories set out in *re Blagdon Cemetery*, I have also considered whether grounds for an exception to the permanence of burial can be identified in the deceased's wartime service, coupled with the honours bestowed on him by the French state and the reported wish of the local and national authorities in France to mark the arrival and interment of the remains there.
23. I acknowledge, in particular, the distinction of being a non-French appointee as Officier of the Légion d'honneur. However, this in itself is not a reason for his exhumation and reinterment in France. If it were, it was overridden at the time of his original interment in England. Indeed, it could be said that to accede to the petition on this ground would be to treat the remains as portable, their transport to and arrival in France being itself something to be celebrated. It might be hoped that the civic authorities in France may find a way of marking his distinguished service in France even in the absence of his exhumed remains.

24. There is one further matter on which I place some little weight. In *re Blagdon Cemetery*, it was relevant that the proposed (and permitted) exhumation from consecrated ground was to be followed by interment in an unconsecrated portion of a local authority cemetery (and so outside the jurisdiction of the consistory court). Prior to the Burial Act 1857, no faculty would issue in such circumstances; because, as explained in *re Talbot* [1901] P 1, “*by so doing they would be sanctioning the removal of remains from a place of burial under the special protection of the ecclesiastical courts to a place of interment under the protection of no court.*” In *re Blagdon Cemetery*, a distinction was drawn between reinterment in a local authority cemetery, which is subject to statutory control, and reinterment elsewhere, where no general inference of the suitability for reinterment can properly be drawn by the consistory court.
25. In this case, the proposed reinterment would be in a civil cemetery in France (this is not, I think, in a military cemetery, contrary to the suggestion in the letter to the court from Gravesham Council.) In *re Streatham Park Cemetery* (2011, Southwark Consistory Court), Petchey Ch. considered a petition for exhumation where reinterment would be in a cemetery in Belgium. In terms which demonstrate parallels with the present case, he said:
- “39. *In the present case, I can assume that the re-interred remains will be in a grave that will be suitably maintained but I cannot be certain as to what will happen to them after 50 years. I think it likely that, if as one might hope, there are still members of the family around who keep the memory of [the deceased] alive, they would purchase an extension of the right of interment. But I have to face the possibility that, sooner or later, the remains might come to a common grave. This, as I understand it, is the tradition in Belgium.*
40. *I think that by permitting exhumation in these circumstances I am contemplating the erosion, to a degree, of the principle of the permanence of Christian burial within the Anglican tradition. Nonetheless, if the remains were to end in a common grave it would*

be many years after they had been exhumed in England and at a time when, sadly, no one thought it important that this should not happen. I do not think that this is a significant erosion of the principle of permanence.”

26. It seems to me that the proposed exhumation and reinterment in a place where the concession to permit interment is, at least initially, only for 50 years does represent some erosion of the principle of permanence; and the fact that the remains would then be outside the jurisdiction of both the ecclesiastical and the civil courts gives additional pause for thought. Whether that would be enough to tip the scales in a balance which was otherwise in favour of exhumation is open to doubt, of course; it did not do so in *re Streatham Cemetery*. But in the present case, where the balance is in any event against the grant of a faculty for exhumation, it is a factor that can properly be weighed in that balance alongside the other factors as set out.

Determination

27. I am not satisfied that the circumstances of the present case justify the grant of a faculty for the exhumation of Captain Le Chene’s remains. To do so on any of the grounds discussed above, or taking them in combination, would be to pay insufficient regard to the presumption of permanence. I must, therefore, dismiss the petition.
28. This will not stand in the way of the petitioner’s remains resting with his, in due time. It is the case that the existing casket will need to be exhumed so that her remains can be placed in it for burial; and that temporary exhumation will need to be pursuant to a faculty. However, I direct that a letter from her executor to the Registry shall suffice for a petition for such a faculty; and that no further fee shall be payable.
29. In the circumstances, I waive my fee for writing this judgment.

The Wp^{ful} David Willink
Chancellor

22 April 2025